

Internal Revenue Service

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Person To Contact:

Telephone Number:

In Re:

Refer Reply To:
CC:TEGE:EB:EC
PLR-138964-08

Date:
February 02, 2009

LEGEND:

Corporation X =
Executive =
Date 1 =
Date 2 =

Dear _____ :

This letter is in response to a letter dated September 8, 2008, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code (Code). Specifically, you requested a ruling that the deduction limitation of section 162(m) of the Code does not apply to compensation paid by Corporation X to Executive pursuant to an employment agreement before the earliest of the four events listed in section 1.162-27(f)(2) of the Income Tax Regulations. The facts, as represented, are as follows.

Corporation X is a publicly held corporation. On Date 1, Corporation X entered into an employment agreement with Executive (Agreement). The terms of the Agreement were documented and made public in a prospectus issued and filed with the Securities and Exchange Commission on Date 1. The Agreement provided for a base salary, bonuses, stock options, and restricted stock. On Date 2, Corporation X became a publicly held corporation and was required to register under section 12 of the Securities Exchange Act of 1934 (Exchange Act). Before Date 2, Corporation X was not a member of an affiliated group of corporations that included a publicly held corporation. Corporation X became a publicly held corporation without an initial public offering.

Section 162(a)(1) of the Code allows a deduction for all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Section 162(m)(1) of the Code provides that for any publicly held corporation no deduction shall be allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year exceeds \$1 million.

Section 162(m)(2) of the Code defines publicly held corporation to mean any corporation issuing any class of common equity securities required to be registered under section 12 of the Exchange Act. Section 1.162-27(c)(1)(i) of the regulations provides that whether a corporation is publicly held is determined based solely on whether, as of the last day of its taxable year, the corporation is subject to the reporting obligations of section 12 of the Exchange Act.

Section 1.162-27(f)(1) of the regulations provides that, in the case of a corporation that was not a publicly held corporation and then becomes a publicly held corporation, the deduction limit of paragraph of section 162(m) does not apply to any remuneration paid pursuant to a compensation plan or agreement that existed during the period in which the corporation was not publicly held. However, in the case of such a corporation that becomes publicly held in connection with an initial public offering, this relief applies only to the extent that the prospectus accompanying the initial public offering disclosed information concerning those plans or agreements that satisfied all applicable securities laws then in effect.

Section 1.162-27(f)(2) provides that a corporation may rely on section 1.162-27(f)(1) until the earliest of: (i) the expiration of the plan or agreement; (ii) the material modification of the plan or agreement, within the meaning of section 1.162-27(h)(1)(iii); (iii) the issuance of all employer stock and other compensation that has been allocated under the plan; or (iv) the first meeting of shareholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the initial public offering occurs or, in the case of a privately held corporation that becomes publicly held without an initial public offering, the first calendar year following the calendar year in which the corporation becomes publicly held.

Section 1.162-27(f)(3) provides that section 1.162-27(f)(1) applies to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in section 1.162-27(f)(1) if the grant occurs on or before the earliest of the events specified in section 1.162-27(f)(2).

Based solely on the facts presented, we rule as follows:

Compensation paid by Corporation X pursuant to the Agreement prior to the expiration of the reliance period described in section 1.162-27(f)(2) is not subject to the deduction limitation of section 162(m) of the Code. Stock-based compensation received by

Executive pursuant to the Agreement that was granted prior to the expiration of the reliance period described in section 1.162-27(f)(2) is not subject to the deduction limitation of section 162(m) of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

John B. Richards
Senior Technician Reviewer
Executive Compensation Branch
Office of Division Counsel /
Associate Chief Counsel /
Tax Exempt & Government Entities